

UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF MASSACHUSETTS

In Re:) Chapter 13
ALEXANDER L. WESTERHOFF) Case No. 21-11695-CJP
Debtor)

NOTICE OF INTENDED PRIVATE SALE OF REAL ESTATE
LOCATED AT 3 COLBURN ROAD,
MANCHESTER-BY-THE-SEA, MASSACHUSETTS, FREE AND CLEAR OF LIENS,
SOLICITATION OF HIGHER OFFERS, DEADLINE FOR SUBMITTING OBJECTIONS
AND HIGHER OFFERS AND HEARING DATE

May 15, 2023 IS THE DATE OF THE PROPOSED SALE

3/31/2023 at 11:59 p.m. IS THE DATE BY WHICH OBJECTIONS OR HIGHER
OFFERS MUST BE MADE

NOTICE is hereby given, pursuant to 11 USC § 363 (b)(1), 11 USC § 363 (f) (3), Fed. R. Bankr. P. 2002(c)(1) and 6004(a) and (c), and MLBR 2002-5 and 6004-1(a), that the Debtor intends to sell at private sale the Debtor's right, title and interest in certain property listed below.

PROPERTY TO BE SOLD:

Residential real estate located at 3 Colburn Road, Manchester-by-the-Sea, Massachusetts (the "Property"). The Property is owned by the Debtor.

THE OFFER:

An offer to purchase the Property has been received for the sum of \$2,200,000.00 payable as follows: The Proposed Buyers have paid a deposit of \$10,000.00 and will pay an additional \$100,000.00 upon the execution of a purchase and sale agreement. The balance of the purchase price, \$2,090,000.00 will be paid at the closing of the sale of the Property.

THE PROPOSED BUYER:

Sarah Tanksley and Ramon Martinez are the proposed buyers (the “Proposed Buyers”). The Proposed Buyers have no relationship to the Debtor or any party in this case.

THE SALE DATE:

The sale shall take place on or after May 15, 2023. The Proposed Buyers have paid a deposit of \$10,000.00 and will pay an additional \$100,000.00 upon the execution of the purchase and sale agreement by February 13, 2023 unless the date for the purchase and sale is extended. The balance of \$2,090,000.00 will be paid on the closing date. The terms of the proposed sale are more particularly described in a Motion for Order Authorizing and Approving Private Sale of Property of the Estate (the “Motion to Approve Sale”) filed with the Court contemporaneously herewith. The Motion to Approve Sale which has been filed with the Court and the offer to purchase, is available at no charge upon written request from the undersigned.

DISTRIBUTION OF SALE PROCEEDS:

To the best of the knowledge of the Debtor, there are the following liens, claims and encumbrances on the Property which will be paid at the closing without further order of this Court:

- A. Real estate taxes and other municipal obligations due or that may become due to the Town of Manchester, Massachusetts for real estate taxes and other municipal obligations to the date of the sale shall be paid directly to the Town of Manchester or the Buyer as part of the closing adjustments. A payoff figure will be sought from the Town. Schedule D filed by the Debtor indicated a balance due as of the filing date of \$38,835.00.
- B. Documentary tax stamps as well as, Seller’s customary recording expense;
- C. First Mortgage to Berkshire Bank (the “Lender”) in the amount of \$1,034,543.87 as of December 29, 2021.¹ The entire balance due to the Lender on this claim on the closing date will be paid in full.

¹ An updated figure will be requested from Counsel to the Lender.

- D. Second Mortgage to Berkshire Bank (the “Lender”) in the amount of \$218,292.97 as of December 29, 2021.² The entire balance due to the Lender on this claim on the closing date will be paid in full.
- E. The Lien claim of Horvitz and Frisch PC in the amount of \$6,264.65;
- F. The Lien claim of the Massachusetts Department of Revenue in the amount of \$84,242.20³ plus applicable interest;
- G. Brokers fees in the amount of 5% of the purchase price or \$110,000.00.
- H. \$500,000.00 to the Debtor for his exemption.
- I. Funds to the Trustee to pay the allowed priority and unsecured claims in this case including the Trustee’s fee - \$58,218.23.
- J. The remainder, if any, to the Debtor;

CONTINGENCIES:

- A. Approval of this Court;
- B. Conveyance of good and clear record and marketable title to the Real Estate;
- C. Financing contingency to obtain a mortgage commitment of 80% by March 6, 2023 at prevailing rates;
- D. An inspection contingency by February 13, 2023 at the Proposed Buyers expense;
- E. Contingent upon the sale of the primary residence of the Proposed Buyers.

HIGHER OFFERS OR OBJECTIONS:

² An updated figure will be requested from Counsel to the Lender.

³ An updated figure will be requested from the DOR.

Any objections to the sale and/or higher offers must be filed in writing with the Clerk, United States Bankruptcy Court, John W. McCormack Post office and Courthouse, 5 Post Office Square, Suite 1150, Boston MA 02109 on or before ~~3/31/2023 at 11:59 pm~~ ~~2023 at 4:30 PM~~ (the "Objection Deadline"). A copy of any objection or higher offer also shall be served upon the undersigned. Any objection to the sale must state with particularity the grounds for the objection and why the intended sale should not be authorized. Any objection to the sale shall be governed by Fed. R. Bankr. P. 9014.

Through this Notice, higher offers for the Property are hereby solicited. Any higher offer must be at least 2.5% greater than the offer of \$2,200,000.00 or at least \$2,255,000.00. Any higher offer must be accompanied by a deposit of \$100,000.00 in the form of a certified or bank check made payable to the undersigned as Counsel to Alexander L. Westerhoff. Higher offers must be on the same terms and conditions provided in the Motion for Sale and herein, other than the higher purchase price.

HEARING:

A telephonic hearing on the Motion to Approve Sale, objections or higher offers is scheduled to take place on APRIL 13, 2023 at 3:00 ~~XXM~~ P.M. before the Honorable Christopher J. Panos, Bankruptcy Judge, via a telephonic hearing. Any party who has filed an objection or higher offer is expected to be present at the telephonic hearing, failing which the objection may be overruled or the higher offer stricken. The Court may take evidence at any hearing on approval of the sale to resolve issues of fact. If no objection to the Motion to Approve Sale or higher offer is timely filed, the Court, in its discretion, may cancel the scheduled hearing and approve the sale without hearing. **Because of the concerns about COVID-19, all participants, including attorneys, the debtor(s), witnesses, affiants, and other attendees shall appear by telephone, and may not appear in person. To appear telephonically, attendees shall, five minutes before the appointed time of hearing, dial 1-877-873-8018 and enter access code 1167883.**

At the hearing on the sale the Court may 1) consider any requests to strike a higher offer; 2) determine further terms and conditions of the sale, 3) determine the requirements for further competitive bidding, and 4) require one or more rounds of sealed or open bids from the original offeror and any other qualifying offeror.

DEPOSIT:

The deposit will be forfeited to the estate if the successful purchaser fails to complete the sale by the date ordered by the Court. If the sale is not completed by the buyer approved by the Court, the Court, without further hearing, may approve the sale of the Property to the next highest bidder.

Any questions concerning the intended sale shall be addressed to the undersigned.

Alexander L. Westerhoff
By his Counsel,

Dated: February 2, 2023

/s/Gary W. Cruickshank, Esq.
21 Custom House Street
Suite 920
Boston, MA 02110
(617) 330-1960
(BBO107600)
gwc@cruickshank-law.com